which is adopted in this apparently formidable argument might possibly form the basis for still further restricting the jurisdiction of the state and of the state courts to such remedies as were known to the common law system unaffected by statute, or, at least, to such remedies only as were known to the common law at the time of the passage of the Judiciary Act. Such a narrow view cannot, however, at this date be entertained. The various state death statutes, for example, giving causes of action which were entirely unknown to the common law, have been consistently upheld and enforced even in the admiralty courts.[6] The only cases where acts have been held unconstitutional are those where the remedy which the state attempted to give was enforcible in rem by the state courts.[7]

These death statutes, although providing a remedy unknown to the common law, nevertheless, retained the right to a jury trial, and were enforcible in the common law courts. The cases, however, have gone further, and by the weight of authority suits in equity are held to be within the purview of the saving clause.[8] These decisions would appear strongly persuasive in the principal case, since the so-called distinguishing feature of a common law action, trial by jury, is absent in both suits in equity and in proceedings before industrial commissions.

Apart, however, from authority, it seems reasonable to hold in accordance with the general understanding that it is a remedy enforcible in personam as opposed to the admiralty proceeding in rem, which is saved. The statute reserves a common law remedy, not an action at common law, and it would be idle to deny that the common law remedy of carriers to retain possession for freight is not preserved to the state courts simply because it does not involve a trial by jury. The conclusion follows that a "common law remedy," as employed by the Judiciary Act, means any remedy, not the maritime libel in rem, whether with or without action or jury, whereby a liability is imposed after due process of law. It would therefore undoubtedly appear that the remedy given under the Workmen's Compensation Act to seamen on domestic ships for injuries occurring on the high seas is within the saving clause, and part of the state's concurrent jurisdiction.

J. F. R.

ADMIRALTY JURISDICTION: TORTS: THE LOCALITY TEST.—It was formerly a dogma of the bench and bar that in regard to torts the jurisdiction of the admiralty courts depended altogether on the locality where the tort occurred, and it was generally assumed

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[7] The Moses Taylor (1866), 4 Wall. 411, 18 L. Ed. 397; The Hine v. Trevor (1866), 4 Wall. 555, 18 L. Ed. 451.

[8] Knapp, Stout & Co. v. McCaffrey (1889), 177 U. S. 638, 44 L. Ed. 921, 20 Sup. Ct. Rep. 824; Soper v. Manning (1888), 147 Mass. 126, 16 N. E. 752; Reynolds v. Nielson (1903), 116 Wis. 483, 93 N. W. 455, 96 Am. St. Rep. 1000.

that, where the locality was one over which admiralty had jurisdiction, all torts occurring there were cognizable in admiralty, whatever their nature. The incongruities of this rule were hinted at by at least one learned text writer,[1] and finally Judge Ross in this circuit, evidently affected by the same considerations, held in Campbell v. Hackfield & Co.,[2] that locality was not alone determinative, but that the tort in question must also be maritime in nature. Subsequently, the Supreme Court, without repudiating but rather reaffirming the locality test, recognized this case without criticism,[3] and later,[4] in a case where there was no doubt as to the sufficiency of the locality, took the trouble also to find that the tort in question was maritime in nature. Yet notwithstanding this tacit recognition that locality alone might not be determinative, Judge Gilbert has said: "In cases of tort the jurisdiction in admiralty depends entirely upon locality. There can be no other test."[5]

The result is an unsatisfactory one, particularly in this Circuit, which gave birth not only to the Hackfield case, but also to the later contradictory dictum of Judge Gilbert. The recognition of the Hackfield doctrine by the Supreme Court is not sufficiently clear-cut to be controlling. What is to happen next? Is the law in a state of transition to a more reasonable view, or has error, that is waiting to be dispelled, crept in? Those who are interested in this problem will find reason for reflection in two recent cases in the lower federal courts. In the most recent of these[6] it was held that admiralty had jurisdiction of an injury by a ship to a submarine cable. The tort, being due to improper navigation, was maritime in nature, but what of the locality? The cable was in the water, but was apparently supported on the bottom, and was not an aid to navigation.[7] The locality test, as strictly laid down in a somewhat similar early federal case,[8] was undoubtedly not so closely observed. In fact, the case shows a decided tendency to base jurisdiction rather on the nature of the tort than on the locality of its occurrence, thereby analogizing the test of jurisdiction to that obtaining as to contracts.[9]

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[1] See Benedict, Admiralty Practice (4th ed.), § 231.

[2] (1903), 125 Fed. 696 (C. C. A., Ninth Circuit).

[3] The Blackheath (1904), 195 U. S. 361, 49 L. Ed. 236, 25 Sup. Ct. Rep. 46.

[4] Atlantic Transport Co. v. Imbrovek (1914), 234 U. S. 52, 58 L. Ed. 1208, 34 Sup. Ct. Rep. 733.

[5] California-Atlantic S. S. Co. v. Central Door and Lumber Co. (1913), 206 Fed. 5 (C. C. A., Ninth Circuit).

[6] United States v. North German Lloyd (1917), 239 Fed. 587 (Dist. Ct., S. D. N. Y.). See also Postal Telegraph Cable Co. v. P. Sanford Ross, Inc. (1915), 221 Fed. 105 (Dist. Ct., E. D. N. Y.).

[7] Cf. The Blackheath, supra, n. 3; The Raithmoor (1916), 241 U. S. 166, 60 L. Ed. 937, 36 Sup. Ct. Rep. 514.

[8] The Maud Webster (1876, 1877), 8 Ben. 547, 16 Fed. Cas. No. 9302.

[9] See New England, etc. Ins. Co. v. Dunham (1870), 11 Wall. 1, 20 L. Ed. 90.

Though this test is perhaps vague, and if ultimately adopted means the repudiation of a host of earlier cases, it is certainly more reasonable, for it gives admiralty courts jurisdiction in all cases of which they may be said to have expert knowledge, namely, those in which the transaction is maritime in its nature and concerns sea affairs.

Another manifestation of this same tendency may be observed in another recent federal case,[10] where it was held that an admiralty court had jurisdiction of a petition to limit liability for a tort clearly maritime in nature, whether or not it answered to the locality test. The court did not base its right to hear the petition wholly on the interstate commerce clause but also on that clause in the Constitution containing the grant of admiralty jurisdiction.[11] The court regarded the damage by the vessel in question as falling within the scope of the legislative power of Congress under this clause,[12] and must therefore have considered that such power extended to all tortious transactions maritime in nature, irrespective of locality. The decision in *United States v. North German Lloyd* would seem to agree with *Postal Telegraph Cable Company v. P. Sanford Ross, Incorporated.*[13]

A. T. W.

CONSTITUTIONAL LAW: POLICE POWER: EMPLOYMENT AGENCIES.—The mode and character of argument adopted by Mr. Justice Brandeis in his dissenting opinion in *Adams v. Tanner*,[1] as applied to a judicial opinion, are almost revolutionary. The majority opinion, written by Mr. Justice McReynolds, on the other hand, is worked out in accordance with the cut-and-dried conventions of the profession. The virtue of Mr. Justice Brandeis' method of attack has become more or less familiar to students of constitutional law through the briefs on Shorter Hours for Women,[2] The Shorter Work Day,[3] and the Oregon Minimum Wage Cases.[4] The first of these briefs was written by Mr. Brandeis himself, as counsel for Oregon, and it blazed the way for new order of legal brief. The first argument in the third of the above mentioned briefs was also prepared by Mr. Brandeis before his nomination as Associate Justice of the Supreme Court, while the completion of that brief and the preparation of the second were performed by Professor Felix Frankfurter and Miss Josephine Goldmark, the Publication Secretary of the National Consumers' League.

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[10] The Steam Dredge No. 6 (1915), 222 Fed. 576 (Dist. Ct., S. D. N. Y.).

[11] U. S. Const., Art. III, § 2.

[12] Cf. In re Garnett (1891), 141 U. S. 1, 35 L. Ed. 631, 11 Sup. Ct. Rep. 840.

[13] See supra, n. 6.

[1] (June 11, 1917), 37 Sup. Ct. Rep. 662.

[2] Muller v. Oregon (1908), 208 U. S. 412, 52 L. Ed. 551, 28 Sup. Ct. Rep. 324.

[3] Bunting v. Oregon (1917), 243 U. S. 426, 37 Sup. Ct. Rep. 435.

[4] Stettler v. O'Hara (April 9, 1917), 37 Sup. Ct. Rep. 475.